

1 Introduced by Committee on Health Care

2 Date:

3 Subject: Health; health information technology; Department of Vermont

4 Health Access; Vermont Information Technology Leaders; Green

5 Mountain Care Board; health information exchange

6 Statement of purpose of bill as introduced: This bill proposes to require the
7 Department of Vermont Health Access and the Vermont Information
8 Technology Leaders, Inc. (VITL) to submit to the General Assembly a work
9 plan, a contingency plan, and bimonthly progress reports regarding their efforts
10 to implement systemic improvements to health information technology and
11 health information exchange in Vermont. It would shift responsibility for
12 Vermont's Health Information Technology Plan from the Agency of
13 Administration to the Department of Vermont Health Access. The bill would
14 extend a portion of the health care claims tax that is dedicated to health
15 information technology through July 1, 2019. In the absence of contrary
16 legislative action during the 2019 legislative session, it would also sunset
17 VITL's statutory authority and its eligibility to use funds from the Health IT-
18 Fund on July 1, 2019.

19 An act relating to health information technology and health information
20 exchange

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. HEALTH INFORMATION TECHNOLOGY; HEALTH
3 INFORMATION EXCHANGE; PROGRESS REPORTS

4 (a) On or before May 1, 2018, the Department of Vermont Health Access
5 and the Vermont Information Technology Leaders, Inc. (VITL) shall submit to
6 the House Committees on Appropriations, on Health Care, and on Ways and
7 Means; the Senate Committees on Appropriations, on Health and Welfare, and
8 on Finance; and the Green Mountain Care Board a work plan detailing the
9 process by which the Department and VITL shall implement the
10 recommendations of the health information technology report submitted to the
11 General Assembly in accordance with 2017 Acts and Resolves No. 73, Sec. 15
12 (Act 73 report). The work plan shall be informed by stakeholder and consumer
13 input and by technology options and opportunities, and shall **identify**
14 **proposed resolutions regarding issues of data ownership and intellectual**
15 **property. It shall also** set forth both a timeline of tasks to be completed and a
16 list of clear objectives to assist the General Assembly in evaluating the success
17 or failure of the parties' work.

18 (b) On or before September 1, 2018, the Department of Vermont Health
19 Access and VITL shall submit to the House Committees on Appropriations, on
20 Health Care, and on Ways and Means; the Senate Committees on
21 Appropriations, on Health and Welfare, and on Finance; the Health Reform

1 Oversight Committee; and the Green Mountain Care Board a contingency plan
2 for health information technology to be used if the Department and VITL are
3 unable to implement the recommendations from the Act 73 report. The
4 contingency plan shall contain the following:

5 (1) a description of the health information exchange services that would
6 need to be replaced;

7 (2) a process for determining the manner in which the services would be
8 replaced and the mechanism for acquiring the replacement services, such as a
9 request for proposals;

10 (3) an assessment of the State’s ownership interests in hardware
11 systems, software systems, applications, data, and other physical and
12 intellectual property that would need to be licensed to a future operator of
13 Vermont’s health information exchange;

14 (4) a plan for transitioning operations from VITL to the new operator or
15 operators; and

16 (5) the impacts of the change on health care providers, health care
17 consumers, State government, and Vermont’s health care reform initiatives.

18 **(c) On or before October 15, 2018, the Department of Vermont Health**
19 **Access shall submit to the House Committees on Appropriations, on**
20 **Health Care, and on Ways and Means; the Senate Committees on**
21 **Appropriations, on Health and Welfare, and on Finance; the Health**

1 **Reform Oversight Committee; and the Green Mountain Care Board the**
2 **results of an evaluation, which shall be conducted by an independent**
3 **entity with expertise in health information technology, of the work plan,**
4 **the contingency plan, and the Department's and VITL's progress toward**
5 **implementing the recommendations in the Act 73 report.**

6 **(d)** On or before May 1, July 1, September 1, and November 1, 2018 **and**
7 **January 1, 2019**, the Department of Vermont Health Access and VITL shall
8 provide to the House Committees on Appropriations, on Health Care, and on
9 Ways and Means; the Senate Committees on Appropriations, on Health and
10 Welfare, and on Finance; the Health Reform Oversight Committee; and the
11 Green Mountain Care Board written updates on their progress toward
12 implementing the recommendations contained in the Act 73 report.

13 **(e)** **In addition to the written updates required by subsection (d) of this**
14 **section, the Department of Vermont Health Access and VITL shall**
15 **provide testimony on their progress toward implementing the**
16 **recommendations contained in the Act 73 report at a meeting of the**
17 **Health Reform Oversight Committee at least once every two months or**
18 **more frequently if so requested by the Committee. The testimony at the**
19 **Committee's first meeting after the General Assembly has adjourned in**
20 **2018 shall also include information regarding the work plan required by**
21 **subsection (a) of this section, and the testimony at the Committee's first**

1 **meeting after September 1, 2018 shall also include information regarding**
2 **the contingency plan required by subsection (b) of this section.**

3 Sec. 2. 18 V.S.A. § 9351 is amended to read:

4 § 9351. HEALTH INFORMATION TECHNOLOGY PLAN

5 (a) **(1)** ~~The Secretary of Administration or designee~~ Department of
6 Vermont Health Access, in consultation with the Department's Health
7 Information Exchange Steering Committee, shall be responsible for the overall
8 coordination of Vermont's statewide Health Information Technology Plan.

9 The Plan shall be revised annually and updated comprehensively every five
10 years to provide a strategic vision for clinical health information technology.

11 **(2) The Department shall submit the proposed Plan to the Green**
12 **Mountain Care Board annually on or before November 1. The Green**
13 **Mountain Care Board shall approve the Plan within 45 days following its**
14 **submission; if the Board has taken no action to approve, modify, or reject**
15 **the Plan after 45 days, the Plan shall be deemed to have been approved.**

16 **(3)** ~~The Secretary or designee~~ Department, in consultation with the
17 Steering Committee, shall administer the Plan, which shall include the
18 implementation of an integrated electronic health information infrastructure for
19 the sharing of electronic health information among health care facilities, health
20 care professionals, public and private payers, and patients. The Plan shall
21 include standards and protocols designed to promote patient education, patient

1 privacy, physician best practices, electronic connectivity to health care data,
2 and, overall, a more efficient and less costly means of delivering quality health
3 care in Vermont.

4 * * *

5 (c) ~~The Secretary of Administration or designee may update the Plan~~
6 Department of Vermont Health Access **may propose updates to the Plan**, in
7 consultation with the Steering Committee and subject to Green Mountain Care
8 Board approval, **may propose updates to the Plan in addition to the annual**
9 **updates** as needed to reflect emerging technologies, the State’s changing
10 needs, and such other areas as the ~~Secretary or designee~~ Department deems
11 appropriate. The ~~Secretary or designee~~ Department shall solicit
12 recommendations from ~~Vermont Information Technology Leaders, Inc. (VITL)~~
13 ~~and other entities~~ interested stakeholders in order to ~~update~~ propose updates to
14 the Health Information Technology Plan pursuant to **subsection (a) of** this
15 section **and to this subsection**, including applicable standards, protocols, and
16 pilot programs, and following approval of the proposed updates by the Green
17 Mountain Care Board, may enter into a contract or grant agreement with ~~VITL~~
18 ~~or other~~ appropriate entities to update some or all of the Plan. Upon approval
19 ~~by the Secretary~~ of the updated Plan by the Green Mountain Care Board, the
20 Department of Vermont Health Access shall distribute the updated Plan ~~shall~~
21 ~~be distributed~~ to the Secretary of Administration; the Commissioner of

1 Information and Innovation; the Commissioner of Financial Regulation; ~~the~~
2 ~~Commissioner of Vermont Health Access~~; the Secretary of Human Services;
3 the Commissioner of Health; the Commissioner of Mental Health; the
4 Commissioner of Disabilities, Aging, and Independent Living; the Senate
5 Committee on Health and Welfare; the House Committee on Health Care;
6 affected parties; and interested stakeholders. Unless major modifications are
7 required, the ~~Secretary~~ Department may present updated information about the
8 Plan to the ~~Green Mountain Care Board~~ and legislative committees of
9 jurisdiction in lieu of creating a written report.

10 * * *

11 Sec. 3. 18 V.S.A. § 9352 is amended to read:

12 § 9352. VERMONT INFORMATION TECHNOLOGY LEADERS

13 * * *

14 (c)(1) Health information exchange operation. VITL shall be designated in
15 the Health Information Technology Plan approved by the Green Mountain
16 Care Board pursuant to section 9351 of this title to operate the exclusive
17 statewide health information exchange network for this State. The Plan shall
18 determine the manner in which Vermont's health information exchange
19 network shall be managed. ~~After the~~ The Green Mountain Care Board
20 approves shall have the authority to approve VITL's **core activities and**
21 budget pursuant to chapter 220 of this title, ~~the Secretary of Administration or~~

1 ~~designee shall enter into procurement grant agreements with VITL pursuant to~~
2 ~~8 V.S.A. § 4089k.~~ Nothing in this chapter shall impede local community
3 providers from the exchange of electronic medical data.

4 (2) Notwithstanding any provision of 3 V.S.A. § 2222 or 2283b to the
5 contrary, upon request of the Secretary of Administration, the Department of
6 Information and Innovation shall review VITL’s technology for security,
7 privacy, and interoperability with State government information technology,
8 consistent with the State’s health information technology plan required by
9 section 9351 of this title.

10 (d) Privacy. The standards and protocols implemented by VITL shall be
11 consistent with those adopted by the statewide Health Information Technology
12 Plan pursuant to subsection 9351(e) of this title.

13 (e) Report. ~~No later than~~ On or before January 15 of each year, VITL shall
14 file a report with the Green Mountain Care Board; the Secretary of
15 Administration; the Commissioner of Information and Innovation; the
16 Commissioner of Financial Regulation; the Commissioner of Vermont Health
17 Access; the Secretary of Human Services; the Commissioner of Health; the
18 Commissioner of Mental Health; the Commissioner of Disabilities, Aging, and
19 Independent Living; the Senate Committee on Health and Welfare; and the
20 House Committee on Health Care. The report shall include an assessment of
21 progress in implementing health information technology in Vermont and

1 recommendations for additional funding and legislation required. In addition,
2 VITL shall publish minutes of VITL meetings and any other relevant
3 information on a public website. The provisions of 2 V.S.A. § 20(d)
4 (expiration of required reports) shall not apply to the report to be made under
5 this subsection.

6 (f) Funding authorization. VITL is authorized to seek matching funds to
7 assist with carrying out the purposes of this section. In addition, it may accept
8 any and all donations, gifts, and grants of money, equipment, supplies,
9 materials, and services from the federal or any local government, or any
10 agency thereof, and from any person, firm, foundation, or corporation for any
11 of its purposes and functions under this section and may receive and use the
12 same, subject to the terms, conditions, and regulations governing such
13 donations, gifts, and grants. VITL shall not use any State funds for health care
14 consumer advertising, marketing, or similar services unless necessary to
15 comply with the terms of a contract or grant that requires a contribution of
16 State funds.

17 (g) Waivers. The Secretary of ~~Administration~~ Human Services or
18 designee, in consultation with VITL, may seek any waivers of federal law, of
19 rule, or of regulation that might assist with implementation of this section.

20 (h) [Repealed.]

21 (i) Certification of meaningful use and connectivity.

1 (1) To the extent necessary to support Vermont’s health care reform
2 goals or as required by federal law, VITL shall be authorized to certify the
3 meaningful use of health information technology and electronic health records
4 by health care providers licensed in Vermont.

5 (2) VITL, in consultation with health care providers and health care
6 facilities, shall establish criteria for creating or maintaining connectivity to the
7 State’s health information exchange network. VITL shall provide the criteria
8 annually ~~by~~ on or before March 1 to the Green Mountain Care Board
9 established pursuant to chapter 220 of this title.

10 (j) Scope of activities. VITL and any person who serves as a member,
11 director, officer, or employee of VITL with or without compensation shall not
12 be considered a health care provider as defined in subdivision 9432 of this title
13 for purposes of any action taken in good faith pursuant to or in reliance upon
14 provisions of this section relating to VITL’s:

15 (1) governance;

16 (2) electronic exchange of health information and operation of the
17 statewide Health Information Exchange Network as long as nothing in such
18 exchange or operation constitutes the practice of medicine pursuant to
19 26 V.S.A. chapter 23 or 33;

20 (3) implementation of privacy provisions;

21 (4) funding authority;

1 (5) application for waivers of federal law;

2 (6) establishment and operation of a financing program providing
3 electronic health records systems to providers; or

4 (7) certification of health care providers' meaningful use of health
5 information technology.

6 Sec. 4. 18 V.S.A. § 9375(b) is amended to read:

7 (b) The Board shall have the following duties:

8 * * *

9 (2)(A) Review and approve Vermont's statewide Health Information
10 Technology Plan pursuant to section 9351 of this title to ensure that the
11 necessary infrastructure is in place to enable the State to achieve the principles
12 expressed in section 9371 of this title. **In performing its review, the Board**
13 **shall consult with and consider any recommendations regarding the plan**
14 **received from the Vermont Information Technology Leaders, Inc. (VITL).**

15 (B) Review and approve the criteria required for health care
16 providers and health care facilities to create or maintain connectivity to the
17 State's health information exchange as set forth in section 9352 of this title.
18 Within 90 days following this approval, the Board shall issue an order
19 explaining its decision.

20 (C) Annually review **the budget and all activities of VITL** and
21 approve the budget, consistent with available funds, **and the core activities**

1 ~~associated with public funding, which shall include establishing the~~
2 ~~interconnectivity of electronic medical records held by health care~~
3 ~~professionals and the storage, management, and exchange of data received~~
4 ~~from such health care professionals, for the purpose of improving the~~
5 ~~quality of and efficiently providing health care to Vermonters of the~~
6 ~~Vermont Information Technology Leaders, Inc. (VITL).~~ This review shall
7 take into account VITL’s responsibilities pursuant to section 9352 of this title
8 and the availability of funds needed to support those responsibilities.

9 * * *

10 Sec. 5. 2013 Acts and Resolves No. 73, Sec. 60(10), as amended by 2017 Acts
11 and Resolves No. 73, Sec. 14, is further amended to read:

12 (10) Secs. 48-51 (health claims tax) shall take effect on July 1, 2013 and
13 52 and 53 (health claims tax revenue; Health IT-Fund; sunset) shall take effect
14 on July 1, ~~2018~~ 2019.

15 Sec. 6. PROSPECTIVE REPEAL OF VITL STATUTE

16 In order ~~to provide the Department of Vermont Health Access and~~
17 ~~Vermont Information Technology Leaders, Inc. with appropriate~~
18 ~~motivation~~ to ensure successful implementation of the Act 73 report
19 recommendations as set forth in the work plan developed pursuant to Sec. 1 of
20 this act, and in the absence of 2019 legislative action to the contrary, 18 V.S.A.
21 § 9352 is repealed on July 1, 2019.

1 Sec. 7. 32 V.S.A. § 10301 is amended to read:

2 § 10301. HEALTH IT-FUND

3 (a) The Vermont Health IT-Fund is established in the State Treasury as a
4 special fund to be a source of funding for Medical Health Care Information
5 Technology Programs and initiatives such as those outlined in the Vermont
6 Health Information Technology Plan administered by the ~~Secretary of~~
7 ~~Administration or designee~~ Department of Vermont Health Access. One
8 hundred percent of the Fund shall be disbursed for the advancement of health
9 information technology adoption and utilization in Vermont as appropriated by
10 the General Assembly, less any disbursements relating to the administration of
11 the Fund. The Fund shall be used for loans and grants to health care providers
12 pursuant to section 10302 of this chapter and for the development of programs
13 and initiatives sponsored by ~~VITL~~ and State entities designed to promote and
14 improve health care information technology, including:

15 (1) a program to provide electronic health information systems and
16 practice management systems for health care and human service practitioners
17 in Vermont;

18 (2) financial support for ~~VITL~~ to build and operate the health
19 information exchange network;

1 (3) implementation of the Blueprint for Health information technology
2 initiatives, related public and mental health initiatives, and the advanced
3 medical home and community care team project; and

4 (4) consulting services for installation, integration, and clinical process
5 ~~re-engineering~~ reengineering relating to the utilization of health-care
6 information technology such as electronic health records.

7 * * *

8 (e) ~~VITL and any other~~ Any entity requesting disbursements from the
9 Health IT-Fund shall develop a detailed annual plan for proposed expenditures
10 from the Health IT-Fund for the upcoming fiscal year. The expenditure plan
11 shall be included within the context of the entity's overall budget, including all
12 revenue and expenditures.

13 * * *

14 (h) ~~VITL and any other~~ Any beneficiary receiving funding shall submit
15 quarterly expenditure reports to the Secretary of Administration and to the
16 Green Mountain Care Board, including a year-end report ~~by~~ on or before
17 August 1.

18 (i) Any primary care practitioner receiving an electronic health information
19 system, practice management system, or both pursuant to subdivision (a)(1) of
20 this section shall maximize usage of such system ~~in accordance with the~~
21 ~~guidelines developed by~~ VITL. A practitioner who is determined ~~by~~ VITL to

1 be using the system to less than its full capacity shall be provided with an
2 opportunity for additional instruction as needed to enable full usage of the
3 system. If a practitioner is unwilling or unable to utilize the system to its full
4 capacity, such practitioner shall refund to ~~VHPL~~ the State the fair market value
5 of the system.

6 Sec. **8**. EFFECTIVE DATES

7 (a) Secs. 1-**6** and this section shall take effect on passage.

8 (b) Sec. **7** (32 V.S.A. § 10301) shall take effect on July 1, 2019, but only if
9 the repeal of 18 V.S.A. § 9352 occurs as set forth in Sec. **6**.